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Leza L Olson 09/19/2006 01:05:20 PM From DB/Inbox: Leza L Olson

Cable
Text:

UNCLAS TEL AVIV 03705

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ACTION: POL
INFO: IPSC PD IMO RES ECON DCM DAO AMB AID ADM RSO
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DISSEMINATION: POL
CHARGE: PROG

APPROVED: AMB:RHJONES
DRAFTED: POL:RBLAUKOPF/PVROOM
CLEARED: DCM:GCRETZ; POL/C:MSIEVERS; POL:SCROWLEY

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TO RUEHC/SECSTATE WASHDC 6405
INFO RUEHXX/ARAB ISRAELI COLLECTIVE

UNCLAS SECTION 01 OF 02 TEL AVIV 003705

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E.O. 12958: N/A
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SUBJECT: POWERS OF INQUIRY: THE PROPOSED WINOGRAD COMMITTEE V. A
STATE COMMISSION OF INQUIRY

REF: A) TEL AVIV 3232; B) TEL AVIV 3370

11. Summary and Introduction: After several false starts (reftels), Prime Minister Olmert proposed and the government approved a "Government Review Committee" to "examine the functioning of both the political leadership and the security establishment regarding the campaign in the north." The Government Review Committee will be chaired by retired Judge Eliyahu Winograd and will include two reservist major generals - Menahem Eitan and Haim Nadel, as well as two academics - law professor Ruth Gavison and professor of public administration Yehezkel Dror. Acting Justice Minister Meir Sheetrit, who initially favored a "State Commission of Inquiry," has stated publicly that the Winograd Committee will enjoy many of the powers of a state commission -- specifically in regard to subpoenaing witnesses and taking testimony under oath. Even with such powers, a Government Review Committee is restricted to drafting recommendations rather than prosecuting individuals.

12. Summary Continued: This cable contains our analysis of the current principal differences between a "Government Review Committee" and a formal "State Commission of Inquiry," and is based on a reading of the relevant laws and expert opinion from the Office of the Legal Advisor to the Knesset. Opposition leader Binyamin Netanyahu and others -- including demonstrators in downtown Tel Aviv -- continue to voice support for a state commission named by the Supreme Court President rather than the committee named by Olmert, but only three ministers in Olmert's cabinet did not vote for the Winograd Committee. End Summary.

Olmert's Proposal: A Government Review Committee

13. The points below pertaining to the Government Review Committee are derived from the provisions of the Government Law of 2001 and the Law on Committees of Inquiry of 1968.

-- The members of the review committee are appointed by a government minister (NB: the PM in this case) and headed by a retired judge (NB: in this case Winograd).

-- The mandate of the committee is to be drafted by the appointing minister (NB: the PM in this case and it was reported he has asked for assistance from the Acting Minister of Justice).

-- At the request of the appointing minister and with government approval, the minister of justice may determine that the committee may exercise powers similar to those of a State Commission of Inquiry in regard to summoning of witnesses and taking testimony under oath -- including testimony from the PM.

-- The minister who appoints the committee is obligated by law to bring its findings before the government.

A State Commission of Inquiry

14. The points below pertaining to the State Commission of Inquiry are derived from the provisions of the Law on Committees of Inquiry of 1968.

-- The head of the Supreme Court (NB: newly named President Dorit Beinisch) appoints the members (normally a three-person panel) and names the chairperson.

-- The mandate is determined by a decision of the government.

-- A State Commission of Inquiry is empowered more extensively than a Government Review Committee in regard to subpoenaing of witnesses and evidentiary procedures (e.g., it may issue a search warrant to obtain evidence -- unlike a Government Review Committee).

-- The State Commission of Inquiry must draft a report on its findings and is authorized to add recommendations. This report must be submitted to the government.

ELEMENTS COMMON TO COMMITTEES AND COMMISSIONS

15. The following aspects are common to both the Government Review Committee and the State Commission of Inquiry:

-- The findings, in the form of a report and recommendations (including recommendations regarding specific persons if such are made) are to be presented to the government.

-- The report is to be published; however, the committee/commission is authorized to withhold publication in whole or in part if this risks jeopardy to state security, foreign relations, vital economic interests, the safety or privacy of an individual or to the method of operation of an agency or body which has investigative powers under the law.

-- A state commission is required to provide evidence to any individual or the family of any dead individual whose reputation may be impugned by its investigation -- a time-consuming, but integrity-preserving requirement that is apparently also required of review committees as well.

-- The committee/commission is authorized to publish the minutes of its hearings in whole or in part. (NB: The cabinet communiqué of September 17 noted that the minutes of the committee's discussions and any other materials will be entrusted to the State Archives.)

-- The findings and recommendations of the committee/commission may not be used as evidence in any legal proceeding.

-- The government is not bound to adopt or implement the committee's recommendations.

-- In the event that operative recommendations are made by the committee and are not acted upon by the government, a suit may be filed with the Supreme Court by an individual or organization (such as the Movement for Quality Government which organized the

demonstration in Tel Aviv on September 9 to demand a State Commission of Inquiry).

-- If the Supreme Court sees fit, having weighed the matter from a legal perspective (not a political or public interest perspective), it is empowered to order implementation of the recommendations of such a report.

-- Such a directive by the Supreme Court would require compliance on the part of the government.

¶6. Since the mandate of any committee determines in large measure its powers and possible findings, it is not yet possible to say how far the Winograd Committee falls short of the scope and authority of a State Commission of Inquiry - or how far back the committee will look into the history of events preceding the most recent Lebanon War. Press reports suggest that it will limit its work to the period since Israeli withdrawal from Lebanon in 2000. However, PM Olmert's Foreign Policy Advisor Shalom Tourgeman told the Ambassador September 14 that the Committee will be allowed to look all the way back to the 1996 Grapes of Wrath period.

JONES